

0000094053

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS:

KRISTIN K. MAYES, Chairman

GARY PIERCE

PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

In the matter of:

MARK W. BOSWORTH and LISA A.
BOSWORTH, husband and wife;STEPHEN G. VAN CAMPEN and DIANE V.
VAN CAMPEN, husband and wife;MICHAEL J. SARGENT and PEGGY L.
SARGENT, husband and wife;ROBERT BORNHOLDT and JANE DOE
BORNHOLDT, husband and wife;MARK BOSWORTH & ASSOCIATES, LLC, an
Arizona limited liability company;3 GRINGOS MEXICAN INVESTMENTS, LLC, an
Arizona limited liability company;

Respondents.

Docket No. S-20600A-08-0340

**RESPONDENTS
MICHAEL J. SARGENT
AND PEGGY L. SARGENT'S****NOTICE OF FILING
IN SUPPORT OF
MOTION TO STAY**

Arizona Corporation Commission

DOCKETED

FEB 24 2009

DOCKETED BY

Respondents Michael J. Sargent and Peggy L. Sargent (collectively the "Sargents") respectfully provide this Notice of Filing in Support of their pending Motion to Stay. Attached is a copy of a Securities Division's ("Division") investigative subpoena recently sent via certified mail to the Sargents' home address. The attached investigative subpoena is conclusive proof that a Division investigation is on-going, and that the Division continues to place the Sargents in the untenable position of having to choose between preserving their Fifth Amendment right to remain silent, and their right to defend themselves in this proceeding.

The Division has been evasive in response to inquiries whether it is aware of a pending criminal investigation. Given the close working relationship between the Attorney General's Office and the Division, this position is, of course, extremely difficult to accept. Now the issuance of the investigative subpoena is conclusive proof of the criminal investigation.

1 If the Division has issued this investigative subpoena in furtherance of its attempts to gather
2 information to assist in a potential criminal prosecution, that is reason alone to grant the Motion to
3 Stay. But realistically, no other plausible reason for issuance of an investigative subpoena exists.
4 This proceeding has been pending since August of last year. If the Division were conducting an
5 investigation to prepare for civil litigation to be filed in the courts, that filing would certainly have
6 occurred by now. The only other rationale for issuing the investigative subpoena is to further a
7 criminal probe. The Division simply cannot have it both ways.

8 We are in administrative litigation before an Administrative Law Judge of the Arizona
9 Corporation Commission ("Commission"). The appropriate way to conduct discovery in this
10 proceeding is pursuant to Rules of Practice before the Commission and the Arizona Rules of Civil
11 Procedure. Attachment 1 is a copy of the investigative subpoena that the Division sent via certified
12 mail to the Sargents' residence. It is plain from its face that it is an investigative subpoena. For
13 example:

- 14 1. It is specifically noted as a subpoena of the "Securities Division."
- 15 2. It is in the Matter of Mark Bosworth, et al. and references the Division's
16 investigation file. It does not refer to the pending proceeding.
- 17 3. The parties to the administrative proceeding were not provided with a copy of this
18 subpoena when it issued, nor obviously would they be provided with copies of any documents that
19 might be produced in response to this investigative subpoena. This investigative subpoena seeks
20 the delivery of the documents to a Special Investigator with the Division.
- 21 4. The plain language on the face of the document speaks for itself. The following
22 language is not found on subpoenas lawfully issued in connection with a pending proceeding before
23 the Commission:

24 Information and documents obtained by the Securities Division in the course
25 of an investigation are confidential, unless made a matter of public record.
26 The Securities Division may disclose the information or documents to a
27 county attorney, the attorney general, a United States Attorney, or to law
enforcement or regulatory officials to be used in any administrative, civil, or
criminal proceeding. You may, in accordance with the rights guaranteed to

1 you by the Fifth Amendment of the Constitution of the United State, refuse to
2 give any information that might establish a direct link in a chain of evidence
3 leading to your criminal conviction.

4 5. The broad nature of Exhibit A to the investigative subpoena expands its reach well
5 beyond the scope of the Custodian of 3 Gringos Mexican Investments, LLC. The subpoena seeks,
6 for the period beginning January 1, 2005 to the present, all documents, incident or relating to the
7 following twenty-two entities and individuals:

- 8 a. 3 Gringos Mexican Investments, LLC
- 9 b. Mark Bosworth
- 10 c. Lisa Bosworth
- 11 d. Mark Bosworth and Associates, LLC
- 12 e. Bosworth Commercial, Inc.
- 13 f. gorenter.com, LLC
- 14 g. Home America Corporate Leasebacks LLC
- 15 h. G5Rainbow Valley Development, LLC
- 16 i. www.gorenter.com, LLC
- 17 j. Bosnel Properties, LLC
- 18 k. Home America Property Management, LLC
- 19 l. Property Masters of America 401K, LLC
- 20 m. Property Masters Real Estate Trust, LLC
- 21 n. Mark Bosworth Residential, LLC
- 22 o. B.F.E. Properties, LLC
- 23 p. Leverage & Acquire, LLC
- 24 q. WYD Investments, LLC
- 25 r. The Mark Bosworth Companies, Inc.
- 26 s. Pinnacle Investment Partners, LLC
- 27 t. YDD Investments, LLC
- u. Team Boz Marketing, LLC
- v. Lisa Boz Marketing, LLC

21 Without trying to restate the Motion to Stay, the whole purpose of the Motion is to keep the
22 Sargents from being placed in the untenable position of having to forfeit the protections provided to
23 them by the Fifth Amendment of the United States Constitution in defending themselves in this
24 administrative proceeding. The Division's lack of clarity regarding the existence of an Attorney
25 General's criminal investigation has been concerning. Everyone in this proceeding realizes that the
26 Division could confirm the existence of a criminal investigation, in the unlikely event it already
27 does not know one exists, by making a telephone call or walking across the street. Its vague
 responses regarding this issue suggest that it is aware of the criminal investigation. The Sargents

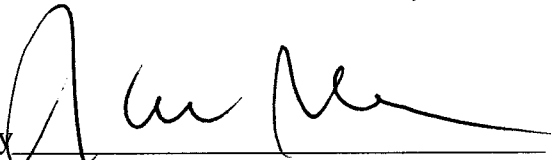
ROSHKA DeWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 have already advised them an investigation is on-going. But now the issuance of an investigative
2 subpoena is concrete proof of the Division is aware of the criminal investigation and seeks to
3 further its course through this subpoena. There is no reason for the Division, if it is collecting
4 information pursuant to the pending administrative proceeding, to issue an investigative subpoena
5 that is by its very nature confidential and meant to circumvent the discovery provisions of this
6 process unless such an investigation exists.

7 For all the reasons previously stated and, in particular, given the existence of this
8 investigative subpoena, the Administrative Law Judge should grant the Motion to Stay as soon as
9 possible.

10 RESPECTFULLY SUBMITTED this 24th day of February, 2009.

11 ROSHKA DeWULF & PATTEN, PLC

12
13
14 By 

15 Paul J. Roshka, Jr., Esq.

16 Timothy J. Sabo, Esq.

17 One Arizona Center

18 400 East Van Buren Street, Suite 800

19 Phoenix, Arizona 85004

20 602-256-6100 (telephone)

21 602-256-6800 (facsimile)

22 Attorneys for Respondents

23 Michael J. Sargent and Peggy L. Sargent

24 ORIGINAL and thirteen copies of the foregoing
25 filed this 24th day of February, 2009 with:

26 Docket Control

27 Arizona Corporation Commission

1200 West Washington Street

Phoenix, Arizona 85007

ROSHKA DEWULF & PATTEN, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

Copy of the foregoing hand-delivered
this 24th day of February, 2009 to:

Marc E. Stern, Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007


Aaron S. Ludwig, Esq.
Securities Division
Arizona Corporation Commission
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007

Copy of the foregoing mailed
this 24th day of February, 2009 to:

Robert D. Mitchell, Esq.
Joshua R. Forest, Esq.
Julie M. Beauregard, Esq.
Mitchell & Forest, P.C.
1850 North Central Avenue, Suite 1715
Phoenix, Arizona 85004
Attorneys for Respondent Robert Bornholdt

Norman C. Keyt, Esq.
Keyt Law Offices
3001 E. Camelback Road, Suite 130
Phoenix, Arizona 85016
Attorneys for Respondents
Stephen G. and Diane V. Van Campen

Mark W. and Lisa A. Bosworth
18094 North 100th Street
Scottsdale, Arizona 85255
Pro Per


Sargent.ACC/pld/NOF re: Motion to Stay doc

Attachment 1

ARIZONA CORPORATION COMMISSION
1200 W. WASHINGTON
PHOENIX, ARIZONA 85007

DIVISION: SECURITIES DIVISION

CERTIFIED MAIL

7007 1490 0000 26

048,20233336
\$05.490
02/19/2009
Mailed From: 85007
US POSTAGE

Custodian of Records
3 Gringos Mexican Investments, LLC
77 E Missouri St. #3
Phoenix, AZ 85012

8501231378 0072



COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 694-7470
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

February 18, 2009

Via Certified Mail, Return Receipt Requested

Custodian of Records
3 Gringos Mexican Investments, LLC
77 E. Missouri St. #3
Phoenix, AZ 85012

Re: Mark Bosworth, et. al.

/File No. 7844

Dear Madame/Sir:

Enclosed you will find a Subpoena Duces Tecum which requires your appearance before the Securities Division on **March 16th, 2009**. In lieu of personal appearance, you may provide the requested documents along with the enclosed Affidavit of Custodian of Records by the due date by mailing them to **Special Investigator Michael D. Brokaw**, Securities Division, Arizona Corporation Commission, 1300 West Washington Street, Third Floor, Phoenix, Arizona 85007. Testimony concerning the documents will be scheduled at a later time, if necessary.

Should your institution not have any documents responsive to the subpoena, please provide written confirmation to that effect.

Should you have any questions regarding this subpoena, please feel free to contact me at (602) 542-0205 or (602) 542-4242.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Brokaw", is written over a horizontal line.

Michael D. Brokaw
Special Investigator

SUBPOENA

SECURITIES DIVISION

ARIZONA CORPORATION COMMISSION

TO Custodian of Records
3 Gringos Mexican Investments, LLC
77 E. Missouri St. #3
Phoenix, AZ 85012

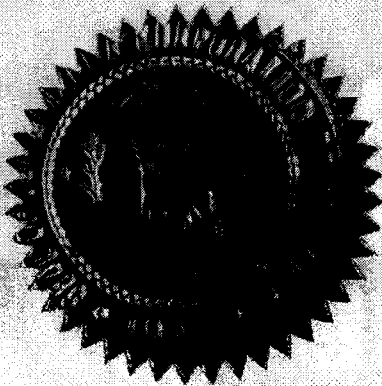
In the matter of

Mark Bosworth, et. al. **file number** 7844

**involving possible violations of the Securities Act
and/or Investment Management Act of Arizona.**

PURSUANT TO A.R.S. § 44-1823 AND A.R.S. § 44-3133, YOU ARE HEREBY REQUIRED to

appear before **Special Investigator Michael D. Brokaw** of the Securities Division of the Arizona Corporation Commission at 1300 West Washington, Third Floor, Phoenix, Arizona 85007, on the **16th day of March, 2009** at 10:00 AM, to PRODUCE THE DOCUMENTS SPECIFIED IN EXHIBIT "A", which is attached and incorporated by reference.



The seal of the Arizona Corporation Commission is affixed hereto, and the undersigned, a member of said Arizona Corporation Commission, or an officer designated by it, has set his hand at Phoenix, Arizona this 18th day of February, 2009.

Julie Coleman, Chief Counsel of Enforcement
Securities Division

Information and documents obtained by the Securities Division in the course of an investigation are confidential, unless made a matter of public record. The Securities Division may disclose the information or documents to a county attorney, the attorney general, a United States Attorney, or to law enforcement or regulatory officials to be used in any administrative, civil, or criminal proceeding. You may, in accordance with the rights guaranteed to you by the Fifth Amendment of the Constitution of the United States, refuse to give any information that might establish a direct link in a chain of evidence leading to your criminal conviction.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Berlin, Executive Assistant to the Interim Executive Director, voice phone number 602/542-3931, e-mail saberlin@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

Exhibit "A"

From the period beginning January 1, 2005 to the present, all documents (including, but not limited to, records, contracts, agreements, written lists, books, correspondence, e-mails, any and all papers, etc.), whether stored on electronic media or otherwise, in your personal possession or that you are reasonably able to obtain, incident or relating to:

- a. 3 Gringos Mexican Investments, LLC
- b. Mark Bosworth
- c. Lisa Bosworth
- d. Mark Bosworth and Associates, LLC
- e. Bosworth Commercial, Inc.
- f. gorenter.com, LLC
- g. Home America Corporate Leasebacks LLC
- h. G5Rainbow Valley Development, LLC
- i. www.gorenter.com, LLC
- j. Bosnel Properties, LLC
- k. Home America Property Management, LLC
- l. Property Masters of America 401K, LLC
- m. Property Masters Real Estate Trust, LLC
- n. Mark Bosworth Residential, LLC
- o. B.F.E. Properties, LLC
- p. Leverage & Acquire, LLC
- q. WYD Investments, LLC
- r. The Mark Bosworth Companies, Inc.
- s. Pinnacle Investment Partners, LLC
- t. YDD Investments, LLC
- u. Team Boz Marketing, LLC
- v. Lisa Boz Marketing, LLC

(collectively "the Persons/Entities") including, but not limited to:

1. Certificates of partnership, partnership agreements, articles of incorporation or organization, bylaws, and operating agreements, including any amendments;
2. Records of all pre-organization or corporate meetings, committee meetings, shareholder or member meetings, board of director meetings, or other business meetings, including minutes, resolutions adopted or proposed, agendas, and all information used or presented at these meetings;
3. Names, addresses, and telephone numbers of all past and present officers and directors, managing members, managers, or managing or general partners;
4. Names, addresses, telephone numbers, and position of all past and present employees, independent contractors, or other agents;

5. Records of all salaries, bonuses, reimbursement, distributions, draws, loans, or any other compensation, whether monetary or otherwise, paid to the individuals listed in response to paragraphs 3 and 4;
6. All financial statements, annual and quarterly financial reports, whether audited or unaudited, with accompanying footnotes and any auditor's reports including any amendments;
7. All assets and liabilities currently held by or for the benefit of the Persons/Entities.
8. All documents filed with any governmental agency related to the conduct of business, the formation of affiliated businesses, the renewal or maintenance of status as a legal entity, or the dissolution of the business;
9. All documents submitted for the purpose of compliance, reporting, or seeking exemptions from registration with any state or federal securities agency;
10. All documents concerning inquiries, investigations, or actions by any state or federal governmental agency, including all documents concerning any civil, criminal or administrative action or lawsuit filed by or against the Persons/Entities in any federal, state, administrative or self-regulatory agency forum.
11. All state and federal tax returns prepared or filed by or on behalf of the Persons/Entities including, without limitation, any applications, forms, related documents, correspondence, or amendments;
12. All accounting records and books of original entry including but not limited to, cash receipts journal, cash disbursements journal, sales journals, general journal, subsidiary journals, general ledger, subsidiary ledgers, and chart of accounts;
13. All bank or other depository institution accounts in the name of, or for the benefit of the Persons/Entities, whether open or closed, including: (a) the name of the bank or depository institution and address of the branch at which the account is located; the name and number of each account; and (c) the names of all signatories on each account;
14. All advertisements, correspondence, circulars, offering memoranda, newsletters, prospectuses, tax opinions, legal opinions, reports, brochures, flyers, handouts, or any other records made available to potential or actual investors;
15. All advertisements, announcements, infomercials, or press releases that appeared in any media including, but not limited to, newspapers, trade journals, magazines, radio, television, or the internet;
16. All information provided through the internet including, but not limited to, copies of all web pages, addresses of web sites, news groups, and email addresses;

17. All contracts or agreements between the Persons/Entities and any person or entity identified in response to paragraphs 14 through 16 above, records of all payments made to such persons or entities, and any communications (correspondence, memoranda, etc.), whether written or electronic, by or between the Persons/Entities and such person or entity and salesman;
18. All lists of prospective investors, including sales lead lists, demographic lists, and any other source of investor names, whether drafted by, purchased by, or obtained for the benefit of the Persons/Entities;
19. All lists of persons who attended seminars, classes, or meetings held or sponsored by or on behalf of the Persons/Entities, its/their affiliates or agents;
20. Names, addresses, and telephone numbers of all individuals or entities that have been offered or sold investments in the Persons/Entities;
21. Documents relating to each individual or entity listed in paragraph 20 including any contracts, forms, subscriptions, agreements, notes, questionnaires, records of investment status, checks, wire transfers, receipts, account statements, tax information, and any correspondence, updates, or other communications;
22. The amounts and dates of each investment for each individual or entity listed in paragraph 20;
23. The amounts and dates of any interest, earnings, distributions, dividends, stock splits, spin-offs, rescission, refund, or any other form of returns to each individual or entity listed in paragraph 20;
24. Names and addresses of all shareholders, members, or partners of the Persons/Entities, including the amount of shares, units, or interest held and a sample share certificate or other evidence of ownership;
25. Records of all securities held, issued, purchased, or traded, including any brokers, underwriters, market makers, clearing firm, or other entities used in each transaction;
26. Records of any mergers, acquisitions, spin-offs, or predecessor entities; and
27. All internal reports and any reports provided to shareholders, members, or partners.
28. All employment contracts or agreements, and the records of the terms and amount of commissions, salaries, bonuses, draws, fees, loans, reimbursement, distributions, refunds, redemptions or any other compensation, benefit or consideration of any kind paid to, or obtained by the Persons/Entities.

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF _____)
County of _____) ss.
_____)

The undersigned hereby declares, under oath, that the following statements are true:

1. I am over the age of eighteen, have personal knowledge of the facts set forth below, and am competent to testify.
2. I am the duly authorized Custodian of Records of _____
_____.
3. I have the authority to certify said records.
4. The records submitted herewith are true copies of all records under my possession or control responsive to the Subpoena directed to the Custodian of Records of the entity identified in paragraph 2 above.
5. The records were prepared or obtained by personnel or representatives of the entity or persons acting under the control of personnel or representatives of the entity identified in paragraph 2 above in the ordinary course of business at or near the time of the act, condition, or event in said records.
6. The records are kept in the course of regularly conducted business pursuant to the regular practice of the entity identified in paragraph 2 above.

Custodian of Records

SUBSCRIBED and SWORN to before me this ____ day of _____, 200_, by _____
_____.

My Commission Expires:

NOTARY PUBLIC

(seal)